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TURBOSAT TECHNOLOGY, INC.
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In re Application of	:	
WU et al.	:	
Application No.: 09/673,559	:	DECISION
PCT No.: PCT/US99/08572	:	
Int. Filing Date: 19 April 1999	:	
Priority Date: 17 April 1998	:	
Attorney Docket No.: 728.1.001	:	
For: SUN-SYNCHRONOUS SUN RAY BLOCKING	:	
DEVICE FOR USE IN A SPACECRAFT HAVING	:	
A DIRECTIONALLY CONTROLLED MAIN BODY	:	

This decision is in response to applicants' submission filed via facsimile transmission on 03 September 2002.

BACKGROUND

On 19 April 1999, applicants filed international application PCT/US99/08572, which claimed a priority date of 17 April 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 03 February 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 October 2000.

On 13 October 2000, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 18 December 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 indicating, *inter alia*, that an oath or declaration of the inventors and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 22 February 2001, applicants submitted an assertion of small entity status, a petition/fee for a one month extension of time, a declaration of inventors, the surcharge under 37 CFR 1.492(e), and a request for refund of filing fee requesting a refund in the amount of \$537.

On 27 February 2002, applicants submitted a "SECOND REQUEST FOR REFUND OF FILING FEE" again requesting a refund in the amount of \$537.

On 17 July 2002, the USPTO mailed a communication indicating that the request for refund in the amount of \$537 for the above-identified application was denied.

On 03 September 2002, applicants submitted the instant renewed request for refund.

DISCUSSION

A refund pursuant to 37 CFR 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under 37 CFR 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. 37 CFR 1.28(a). Here, an assertion of small entity status under 37 CFR 1.27(c) and a request for refund of the excess amount were filed later than three months after the date of the timely payment of the full fee. Accordingly, the request for refund is refused.

Applicants urge that the document "Petitions Practice Within the PTO on Patent Matter" suggests there is leeway in the time frame set for granting a refund based on small entity status. However, the rule regarding refunds based on small entity status is quite clear in setting a definite time limit. 37 CFR 1.28(a) states:

Refunds based on later establishment of small entity status. A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed **within three months** of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

Applicants also urge that they have always had small entity status. As noted in 37 CFR 1.28(a), however, "status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee."

Applicants also urge that applicants' attorneys were responsible for filing the request for refund in an untimely manner. Nevertheless, the request for refund was still untimely.

CONCLUSION

The request for refund under 37 CFR 1.26 is **DISMISSED** for the reasons set forth above.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to Technology Center 3600 for decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed 04 November 2002.



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